

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

_____)	
In the Matter of)	
)	Docket No. 16-CRB-0010-SD (2014-17)
Distribution of the 2014-17)	
Satellite Royalty Funds)	
_____)	

MPA NOTICE OF CONTROVERSIES

Pursuant to the Copyright Royalty Judges’ (“Judges”) *Corrected Scheduling Order And Notice Of Voluntary Negotiation Period*, dated April 6, 2021 (“April 6 Order”), which announced the Voluntary Negotiation Period and set the initial case schedule in the captioned proceeding, the Motion Picture Association, Inc. (“MPA”), on behalf of its member companies and other producers and distributors of syndicated series, movies, specials, and non-team sports broadcast by television stations and retransmitted by satellite carriers who have agreed to representation by MPA (“MPA-represented Program Suppliers”), hereby submits its Notice of Controversies (“Notice”) regarding distribution of the 2014, 2015, 2016, and 2017 satellite royalty funds (“2014-17 Satellite Funds”).

I. Statement Of The Nature Of Controversies

As separately reported today, the satellite Allocation Phase Parties have reached a settlement in principle of all Allocation Phase controversies related to the 2014-17 Satellite Funds. *See Joint Notice Of Partial Settlement* at 1, Docket No. 16-CRB-0010-SD (2014-17) (filed July 19, 2021). MPA is also pleased to report that there are no outstanding Distribution Phase controversies within the Program Suppliers category as to the 2014 satellite royalty year, as MPA is the only remaining participant in this proceeding seeking a share of 2014 satellite

royalties in the Program Suppliers category.¹ However, as of the date of this Notice, Distribution Phase controversies remain outstanding within the Program Suppliers category as to the 2015, 2016, and 2017 satellite royalty funds between MPA and Multigroup Claimants (“MC”).

The April 6 Order required all participants to “participate in good faith settlement negotiations aimed at resolving controversies regarding the ultimate distribution of the royalty funds for the years at issue in this proceeding” during the Voluntary Negotiation Period established by the Judges. *See* April 6 Order at 1. During the Voluntary Negotiation Period, MPA initiated settlement discussions with MC and participated in two settlement telephone conferences with MC. Despite good faith efforts by MPA and MC, the parties were unable to reach a settlement, and Distribution Phase controversies remain outstanding in the Program Suppliers category between MPA and MC as to the 2015, 2016, and 2017 satellite royalty years. As explained below, it appears that further proceedings before the Judges will be required to resolve these controversies.

II. Identification Of The Legal And Factual Issues To Be Presented To The Judges

Each participant in the referenced proceeding must establish that its claims are valid and are eligible to be allocated royalties and that the claimed programs have been properly categorized within one of the Satellite Claimant Categories adopted by the Judges for this proceeding (“Eligibility Issues”). Eligibility Issues are threshold issues before the Judges can resolve royalty allocation and distribution issues. As the Judges have made clear, before any royalty distribution can be made, the Judges “must first determine whether the copyright owner is eligible to receive royalties.” *Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty*

¹ *See Order Dismissing David Powell As A Participant* at 1-3 (June 25, 2020). In addition, Multigroup Claimants has confirmed in pleadings filed with the Judges that it did not file a 2014 satellite royalty claim, and is not seeking a share of 2014 satellite royalties. *See Multigroup Claimants’ Opposition To Second Supplemental Memorandum In Support Of Motion To Lift Stay* at 3 (April 1, 2021).

Funds, 78 Fed. Reg. 64984, 64987 (Oct. 30, 2013) (citing *Universal City Studios LLLP v. Peters*, 402 F.3d at 1235, 1244 (D.C. Cir. 2005); *Order Denying Motions To Strike Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 2 (Sept. 14, 2012)). This is because Section 119 authorizes royalty distribution only to copyright owners or their authorized representatives who have filed valid claims for such royalties, demonstrated that they are copyright owners of works entitled to receive such royalties, and presented evidence establishing their share of the royalties in a proceeding before the Judges. *See* 17 U.S.C. §§ 119(b)(4) and (5)(A); § 803.

As the Judges know, MC is another name for Worldwide Subsidy Group, LLC d/b/a Independent Producers Group (“IPG”). MC and IPG have been denied a presumption of validity as to their cable and satellite royalty claims, repeatedly, in past Distribution Phase proceedings before the Judges.² Given this history, MPA believes that preliminary discovery, briefing, and a preliminary hearing will be necessary to resolve Eligibility Issues within the Program Suppliers category, and that such proceedings (and a ruling from the Judges addressing Eligibility Issues) must precede any portion of the proceeding focused on methodology and allocation issues. Moreover, consolidation of cable and satellite proceedings, particularly when addressing Eligibility Issues, would promote judicial economy and substantially decrease the cost of litigation for the parties. MPA expects claims validity and program categorization issues to be substantially similar, if not identical, in cable and satellite.

² As the Judges are aware, MC was denied any presumption of validity as to its cable or satellite royalty claims for the 2010-13 cable and satellite royalty years, and a large number of its claims were dismissed as unauthorized. *See Ruling And Order Regarding Objections To Cable And Satellite Claims* at 5-10 and Appendices A-B (October 23, 2017). Similarly, IPG was also denied any presumption of validity as to its cable or satellite royalty claims filed for the 2004-2009 cable and 1999-2009 satellite royalty years, and the Judges dismissed a very large number of entities that IPG claimed to represent as unauthorized. *See Memorandum Opinion And Ruling On Validity And Categorization Of Claims*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 9-10; Exhibits A-1 and A-2 (March 13, 2015). The Judges also dismissed a significant number of IPG entities as unauthorized as to the 2000-2003 cable royalty years. *See Memorandum Opinion And Order Following Preliminary Hearing On Validity Of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 3-14; Exhibit B (March 21, 2013).

Following resolution of Eligibility Issues, the Judges can proceed to consider outstanding Distribution Phase allocation issues within the Program Suppliers category based on the parties' respective methodological approaches. When methodology issues are ultimately addressed, MPA intends to present evidence regarding the appropriate allocation of royalties within the Program Suppliers category as to the 2015, 2016, and 2017 satellite royalty funds, and intends to participate fully in all parts of the proceeding.

III. Proposal For Further Proceedings

The April 6 Order also requires the parties to submit a proposal for further proceedings as a part of this Notice. *See* April 6 Order at 1. Once all 2014-17 satellite Allocation Phase issues are settled, MPA proposes that outstanding Distribution Phase issues related to the 2014-17 Satellite Funds, which are smaller in scope, be consolidated with Distribution Phase issues to be addressed in the 2014-17 cable proceeding, Docket No. 16-CRB-0009-CD (2014-17), in order to promote efficiency and judicial economy.³

CONCLUSION

MPA will continue its good faith efforts to reach a settlement with MC to resolve its Distribution Phase controversies in the Program Suppliers category as to the 2015, 2016, and 2017 satellite royalty funds. However, given MC and IPG's history in royalty distribution proceedings, MPA remains skeptical that a settlement can be achieved in this proceeding until all Eligibility Issues are fully resolved by the Judges. Accordingly, MPA respectfully requests that the Judges resolve Eligibility Issues before considering Distribution Phase allocation or methodology issues for the 2014-17 Satellite Funds. MPA also requests that the Judges

³ Consolidation of outstanding cable and satellite Distribution Phase issues in the interest of judicial economy is consistent with precedent. *See Order Consolidating Proceedings And Reinstating Case Schedule* at 1-2, Docket No. 14-CRB-0010-CD/SD (2010-13) (December 22, 2017).

consolidate any outstanding Distribution Phase issues remaining related to the 2014-17 Satellite Funds with the 2014-17 cable proceeding, Docket No. 16-CRB-0009-CD.

Respectfully submitted,

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Dated: July 19, 2021

CERTIFICATE OF SERVICE

I certify that on July 19, 2021, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ *Lucy Holmes Plovnick*
Lucy Holmes Plovnick

Proof of Delivery

I hereby certify that on Monday, July 19, 2021, I provided a true and correct copy of the MPA Notice of Controversies to the following:

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via ESERVICE at ted@copyrightroyalties.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Multigroup Claimants, represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Devotional Claimants, represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Joint Sports Claimants, represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@arnoldporter.com

Broadcaster Claimants Group, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@dbr.com

Signed: /s/ Lucy H Plovnick